CERTIFICATE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 213

RANDOLPH & RANDOLPH, APPELLANTS,

vs.

W. SCRUGGS, TRUSTEE IN BANKRUPTCY OF THE LANGSTAFF HARDWARE COMPANY.

IN A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

FILED MARCH 10, 1903.

(18,449.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

No. 272

RANDOLPH & RANDOLPH, APPELLANTS,

vs.

J. W. SCRUGGS, TRUSTEE IN BANKRUPTCY OF THE LANGSTAFF HARDWARE COMPANY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 9, 1902.

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1 United States Circuit Court of Appeals, Sixth Circuit.

RANDOLPH AND RANDOLPH
vs.
J. W. SCRUGGS, Trustee in Bankruptcy of the Langstaff Hardware Co. } No. 997.

This is an appeal from the district court for the western district of Tennessee, sitting as a court of bankruptcy, disallowing a claim filed by the appellants against the bankrupt estate exceeding five hundred dollars in amount. From the transcript of the record it appears:

(1.) That the Langstaff Hardware Company is a mercantile corporation, organized under the general law of Tennessee, providing for the organization of such corporations, which was engaged in carrying on a general hardware business at Memphis, in the western district of Tennessee.

(2.) Being embarrassed, it, on the 13th day of August, 1900, made a general deed of assignment, under the general-assignment law of Tennessee, by which it conveyed to one C. W. Griffith, as assignee, all of its corporate property of every kind, for the equal benefit of all its creditors. The assignee accepted the trust and qualified by executing bond and taking the oath prescribed by the Tennessee statute, and entered into possession of all the assigned estate. This deed of assignment provided that the assignee should pay "reasonable counsel and attorneys' fees for preparing this deed and for advice and service to be furnished and rendered him in the course of the administration of the trust hereby created." Within four months after this deed of assignment the Langstaff Hardware Company, upon a petition by its creditors, was adjudicated a bankrupt, and this deed set aside as in contravention of the bankrupt law. A trustee was duly chosen, who has taken possession of the assigned assets of the bankrupt.

2 (3.) The appellants filed a claim against the bankrupt estate for professional services rendered the bankrupt in preparing the said deed of general assignment, and the assignee thereunder in advising and counseling him in respect of his duties and in defending a suit brought to wind up the corporation in a State chancery court, and for services rendered the assignee in resisting the adjudication of bankruptcy.

The items of this claim were as follows:

(*a.*) For services rendered the corporation in preparing the general assignment	$500 00
(*b.*) For general advice and counsel to the assignee in respect to the duties of his trust	250 00

(c.) For legal services in defense of a suit brought in a State court wherein it was sought to have the corporation wound up as an insolvent corporation, and its assets distributed under the orders and decrees of the court..... 100 00

(*d.*) For services rendered by employment of the assignee in resisting an adjudication of bankruptcy against the Langstaff Hardware Company..... 300 00

The appellants asserted and claimed that each of said items constituted a prior charge upon the assets and asked to have same paid by the trustee in preference to the unsecured creditors. The trustee and certain creditors excepted to each item of this account.

The referee, upon the evidence, found and certified that the services had been rendered as claimed and were reasonably worth the amount claimed, but that the same did not constitute expenses allowable as a preference and were not otherwise a lien. He allowed the item of $500.00 as an unsecured claim against the bankrupt, but disallowed the other items as not being debts of the bankrupt. His order was duly excepted to and the questions certified to the court in due form. The district judge sustained the referee so far as he held the claim to be non-preferential and adjudged that none of the items constituted a debt, provable for any purpose against the bankrupt estate. From this judgment the appellants have appealed and assigned error.

Upon this state of facts this court desires the instruction of the Supreme Court, that it may properly decide the questions of law thus arising.

(1.) Is a claim for professional services rendered to a bank-
3 rupt corporation in the preparation of a general assignment, valid under the law of Tennessee, entitled to be paid as a preferential claim out of the estate of the corporation in the hands of a trustee in bankruptcy, when the corporation was adjudicated an involuntary bankrupt within four months after the making of the assignment, and the assignment set aside as in contravention of the bankrupt law?

(2.) Is a claim for professional advice and legal services rendered such an assignee, prior to an adjudication of bankruptcy against the assignor, the assignment providing that the costs and expenses of administering the trust should be first paid, entitled to be proven as a preferential claim against the bankrupt estate?

(3.) Is a claim against such an assignee for legal services rendered at his employment in resisting an adjudication of involuntary bankruptcy against the assignor, allowable as a preferential claim when the necessary effect of the adjudication would be to set aside the assignment under which the assignee was acting?

(4.) If not entitled to be allowed as preferential claims, may either of the items described in the foregoing questions be proven as unsecured debts of the bankrupt corporation?

It is, therefore, ordered that a copy of this certificate, under the

seal of the court, be filed with the clerk of the Supreme Court, at Washington.

HORACE H. LURTON,
Circuit Judge,
WILLIAM R. DAY,
Circuit Judge,
GEO. P. WAUTY,
District Judge,
Judges of the U. S. Circuit Court of Appeals for the Sixth Circuit, Sitting in said Cause.

March 6, 1902.

4 United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit,* } *ss:*

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing certificate and statement of facts in the case of Randolph and Randolph *vs.* J. W. Scruggs, trustee, etc., was duly filed and entered of record in my office by order of said court, and as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at the city of Cincinnati, Ohio, this 6th day of March, A. D. 1902.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk of United States Circuit Court of Appeals for the Sixth Circuit.

Endorsed on cover: (Certificate.) File No. 18449. U S. C. C. of appeals, 6th circuit. Term No. 272. Randolph and Randolph appellants *vs.* J. W. Scruggs, trustee in bankruptcy of the Langstaff Hardware Company. Filed March 15th, 1902.